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Materials for

CULTURE, RIGHTS, AND EQUALITY: THE MULTICULTURALISM DEBATE IN COMPARTIVE PERSPECTIVE (461HF)

FALL 2002

Volume 1

Professor Ayelet Shachar
Faculty of Law
University of Toronto

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CULTURE, RIGHTS, AND EQUALITY:
THE MULTICULTURALISM DEBATE
IN COMPARATIVE PERSPECTIVE (461HF)

Professor Ayelet Shachar
Three Credits; Fall 2002
Perspective Course; Extended Paper Option
Class meeting: Thursday 4:10-6:00; Room TBA
Office Hours: Friday 12:00-1:00; Office: FA 310; Phone: 978-1620
E-mail: ayelet.shachar@utoronto.ca

How should we think about the rights of minority groups in diverse societies? This course looks to political theory and legal practice in democratic polities around the globe in an attempt to identify morally defensible and politically viable answers to this question. Attention will focus upon the contemporary understanding of multiculturalism as it refers to a wide range of public policy measures designed to facilitate minority groups' practices and norms. For example, members of specific groups may receive exemptions from general laws or may seek a degree of autonomous jurisdiction over their internal affairs. The course will consist of three parts. The first part will explore the philosophical, political, and legal foundations of multiculturalism as a theory of differentiated citizenship. The second part will examine specific public policy arenas (such as education, family law, and criminal law) in which minority communities seek recognition and accommodation of their distinctive traditions and ways of life. The discussion will evaluate the potentially negative effects of multicultural policies on intra-group power hierarchies and inter-community relations. Examples will be drawn from the recent experiences of diverse societies in different regions of the world. The third and final part of the course will explore innovative institutional designs aimed at reducing the tension between the accommodation of cultural differences and the protection of individual rights. Taken together, the three parts of the course will address current debates about the most suitable standards for creating, sustaining and rearranging the interactions between the group, the state, and the individual.

Evaluation:

- Class participation (10%): Class meetings will be organized around a discussion of each week's readings. Class participation includes attendance, substantive participation in weekly discussions, and one in-class presentation of a comment paper (see below).

- A five-page comment paper (20%): The comment paper will be a critical assessment of one or more of the sources on the reading list. Comment papers are due at 4 p.m. on the Friday before the readings are scheduled to be discussed. Each student is expected to use the five-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The submission of the comment paper will be accompanied by a short in-class presentation of the paper. Students must sign up for the oral presentation of one of their comment papers ahead of time, during the second meeting of the seminar.

- A final (approx. 20-25 page) research paper (70%): The final paper's topic must be pre-approved by the instructor. A one-page outline of your paper must be turned by 4:00 p.m., Thursday, November 14. The final paper is due by Friday, 4:00 p.m., December 19, 2002 (Records Office).

Required Reading Materials:

Reading material will draw on leading Canadian, American, and comparative case law and legislation, as well as contemporary political theory literature. The reading material is assembled in "Culture, Rights, and Equality: The Multiculturalism Debate in Comparative Perspective" *Course Packet* (CP), edited by Ayelet Shachar (University of Toronto Faculty of Law, 2002). The CP is available for purchase at the University of Toronto Faculty of Law Bookstore. The CP includes all the reading items but those drawn from the following two books:

Will Kymlicka and Wayne Norman, editors, *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000).

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001).

The two books are available for purchase at the University of Toronto Faculty of Law Bookstore. Additional copies have been placed on short-term reserve at the Bora Laskin Law Library.

I. FOUNDATIONS

Week One: Introduction

Objectives and design of the course.

Course requirements.

Canadian Charter of Rights and Freedoms, s. 27, Schedule B, Constitution Act, 1982. 1

Canadian Multiculturalism Act, R.S.C. 1985, c. 24 (4th Supp.). 2 - 6

Week Two: Citizenship and Group-Differentiated Rights

Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), pp. 10-44. 1 - 24

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), pp. 17-44. MCJ

Week Three: Law and Diversity

Professor Shachar will deliver the first Robert F. Harney Lecture in the 2002-2003 *Ethnic, Immigration, and Pluralism Series* (Munk Centre, Room 108N). Class participants must attend the lecture. A reception will follow the lecture.

Week Four: Defining "Culture," "Identity," and the Limits of Toleration

Martha Minow, "Identities," Vol. 3 *Yale Journal of Law and the Humanities* 97 (1991). 25 - 42

R v. Van der Peet [1996] 2 S.C.R. 507. 43 - 47

Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, (Cambridge, MA: Harvard University Press, 2000), pp. 140-158. 48 - 64

II. ILLUSTRATIONS: CONTESTED SOCIAL AND LEGAL ARENAS

Week Five: Freedom From and Of Religion

R. v. Big M Drug Mart Ltd. [1985] 1 S.C.R. 295. 65 - 70

Adler et. al. v. The Queen in right of Ontario et. al. [1996] 3 S.C.R. 609. 71 - 73

Eamonn Callan, "Discrimination and Religious Schooling," in *Citizenship in Diverse Societies*, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), pp. 45-67. CDS

Ed Morgan, "Religious Equality Comes to Toronto Education," Vol. 32 *Orbit* 72 (2001). 74 - 76

"Hands Up for Vouchers," The *Economist*, February 23, 2002, 13. 77 - 79

Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947). 80 - 83

Lee v. Weisman, 505 U.S. 577 (1992). 84 - 87

The German *Classroom Crucifixion Case*, 1 BvR 1087/91 (1995). 88 - 89

Zoberst v. Catalina Foothills School District, 509 U.S. 1 (1993). 90 - 91

Agostini v. Felton, 117 S. Ct. 1997 (1997). 92 - 96

Week Six: Personal and Customary Systems of Law

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), pp. 63-87. MCJ

Kiri Singh, "Obstacles to Women's Rights in India," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), pp. 375-396. 97- 109

Frances Raday, "Israel – The Incorporation of Religious Patriarchy in a Modern State," Vol. 4 *International Review of Comparative Public Policy* 209 (1992). 109 - 117

Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996), pp. 109-137. 119 - 133

Suad Joseph, "Women Between Nation and State in Lebanon," in *Between Woman and Nation: Nationalisms, Transnational Feminisms, and the State*, ed. Caren Kaplan, Norma Alarcón, and Minoo Moallem (Durham, NC: Duke University Press, 1999), pp. 162-181. 134 - 143

Week Seven: Indigenous Peoples

Canada, Royal Commission on Aboriginal Peoples, *Report*, Vol. 4 *Perspectives and Realities* (Ottawa: Queen's Printer,1996), pp. 28-53. 149- 156

Darlene M. Johnson, "Native Rights as Collective Rights: A Question of Group Self-Preservation," Vol. 2 *Canadian Journal of Law and Jurisprudence* 19 (1989). 157- 165

John Borrows, "'Landed' Citizenship: Narratives of Aboriginal Political Participation," in *Citizenship in Diverse Societies*, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), pp. 326-342. CDS

Week Eight: Child-Parent-Community-State (Education, Linguistic Rights; Medical Decisions)

Wisconsin v. Yoder, 406 U.S. 205 (1972). 166- 168

Board of Education of Kiryas Joel Village School District v. Grumet, 512 U.S. 687 (1994). 169- 174

Jeff Spinner-Halev, "Extending Diversity: Religion in Public and Private Education," in *Citizenship in Diverse Societies*, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), pp. 68-95. CDS

Mahe v. Alberta [1990] 1 S.C.R. 342. 165- 179

Arsenault-Cameron v. Prince Edward Island [2000] 1 S.C.R 3. 180- 189

Pierre A. Coulombe, "Citizenship and Official Bilingualism in Canada," in *Citizenship in Diverse Societies*, ed. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), pp. 273-293. CDS

B(R) v. Children's Aid Society of Metropolitan Toronto [1995] S.C.R. 313. 190 - 192

Re J. (An Infant): B and B v. Director General of Social Welfare [1996] 2 N.Z.L.R. 134. 193-199

Dawn Walton, "Teenager with Leukemia to fight Transfusion Moves," *The Globe and Mail*, February 23, 2002. 200 - 204

Alberta (Director of Child Welfare) v. H. (B.) [2002] Alta. Prov. Ct., N21619, March 15, 2002. 205-233

Joseph Goldstein, "Medical Care for the Child at Risk: On State Supervention of Parental Autonomy" Vol. 86 *Yale Law Journal* 645 (1977). 234 - 247

Week Nine: Respect for Differences vs. Women's Rights

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). 248 - 254

Native Women's Association of Canada v. Canada [1994] 3 S.C.R. 627. 255 - 260

Marie-Aimee Helie-Lucas, "The Preferential Symbol for Islamic Identity: Women in Muslim Personal Laws" in *Identity Politics & Women*, Valentine M. Moghadam ed. (Boulder: Westview Press, 1994), pp. 391-407. 261 - 269

Susan Moller Okin, *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton: Princeton University Press, 1999), pp. 9-24. 270 - 278

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), pp. 45-62. MCJ

Week Ten: Reading Period

A one-page outline of your final paper and preliminary bibliography is due by 4:00 p.m., Thursday, November 14.

Week Eleven: Family Law (Marriage; Divorce; Custody; Visitation)

David L. Chambers, "Civilizing the Natives: Marriage in Post-Apartheid South Africa," Vol. 129 *Daedalus* 101 (2000). 279 - 291

Samia Bano, "Muslim and South Asian Women: Customary Law and Citizenship in Britain," in *Women, Citizenship, and Difference*, ed. Nira Yuval-Davis and Pnina Werbner (London: Zed Books, 1999), pp. 162-177. 292 - 299

Linda J. Lacey, "Liberal Thought and Religion in Custody and Visitation Cases," in *Law and Religion: A Critical Anthology*, ed. Stephen M. Feldman (New York: NYU Press, 2000), pp. 411-424. 300 - 313

Kimberly Van De Perre v. Theodore Edwards [2001] SSC 60 (File No. 27897). 314 - 330

III. INSTITUTIONAL ATTEMPTS TO REDUCE THE TENSION BETWEEN ACCOMMODATING DIFFERENCES AND RESPECTING RIGHTS

Week Twelve: ADR; Democratic Inclusion; Political Representation; International Law

R. v. Moses (1992), 71 CCC (3d) 347 (Y.T. Terr. Ct.). 331 - 339

Jennifer J. Llewellyn, "Dealing with the Legacy of Native Residential School Abuse in Canada: Litigation, ADR, and Restorative Justice" 52 *University of Toronto Law Journal* 253 (2002). 340 - 357

Donald L. Horowitz, "Democracy in Divided Societies," in *Nationalism, Ethnic Conflict, and Democracy*, ed. Larry Diamond and Marc F. Plattner (Baltimore: John Hopkins University Press, 1994), pp. 35-55. 359 - 368

Melissa S. Williams, *Voice, Trust, and Memory: Marginalized Groups and the Failing of Liberal Representation* (Princeton: Princeton University Press, 1998), pp. 176-202. 369 - 382

S. James Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims," Vol. 75 *Iowa Law Review* 837 (1990). 383 - 387

Sandra Lovelace v. Canada, Report of the UN Human Rights Committee, GAOR, 36th Session, Supplement No. 40 (A/36/40), pp. 166-175. 388 - 390

Week Thirteen: Joint Governance Regimes

Nisga'a Final Agreement, signed on behalf of the Nisga'a Nation and Her Majesty in right of British Columbia on April 27, 1999 and on behalf of Her Majesty in right of Canada on May 4, 1999 and laid before the House of Commons on October 19, 1999, at paras. 39-40, 75-107. 391 - 407

Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), pp. 88-165. MCJ

Patrick Macklem and Ed Morgan, "Indigenous Rights in the Inter-American System: The Amicus Brief of the Assembly of First Nations in *Awas Tingi v. Republic of Nicaragua*," Vol. 22 *Human Rights Quarterly* 562 (2000). 408 - 446

Vicki C. Jackson, "Citizenship and Federalism," in *Citizenship Today: Global Perspectives and Practices*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer (Washington DC: Brookings Institution Press, 2001), pp. 127-182. 417 - 430

IV. THE MULTICULTURALISM DEBATE REVISITED

Week Fourteen: Do We Need Cultural Rights After All?

Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge, MA: Harvard University Press, 2001), pp. 19-54. 431 - 449

Chandran Kukathas, "Liberalism and Multiculturalism: The Politics of Indifference" Vol. 26 *Political Theory* 686 (1998). 450 - 456

Ayelet Shachar, "Two Critiques of Multiculturalism," Vol. 23 *Cardozo Law Review* 101 (2001). 457 - 504